IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : NDMC ACT

CONTEMPT CASE (C) No. 227 of 2007

Orders reserved: September 07,2007

Date of decision: September 14,2007

CENTRAL SERVICE STATION and ORS.		Petitioner
	Through	Mr. Peeyoosh Kalra, Advocate.
	versus	
N.D.M.C. and ORS.		Respondents
	Through	Mr. V.P.Singh, Senior Advocate with Ms. Anjana Gosain, Advocates.

Dr. S. MURALIDHAR, J.

1. The Petitioners in this contempt petition allege wilful disobedience by the New Delhi Municipal Corporation ('NDMC') of the judgment dated 7.11.2006 passed by this Court in W.P. (C) No. 1180-83 of 2006.

2. The Petitioners are authorised dealers of the leading petroleum companies like the Hindustan Petroleum Corporation Limited, the Bharat Petroleum Corporation Limited and the Indian Oil Corporation Limited and have been running petrol pumps in the Connaught Place area in New Delhi for over five decades. On learning of a proposed new traffic circulation plan for Connaught Place and apprehending that they would be adversely affected, the petitioners wrote to the NDMC on 15.2.2005. They enquired whether and how they would be affected and where they would be relocated in that event. They were informed by a letter dated 15.7.2005 by the NDMC that the final plan for the relocation of the existing petroleum pumps was yet to be finalised and that they would be informed appropriately as and when a final decision was taken. The NDMC also informed the first Petitioner here that the final circulation plan would be issued only after consulting the stakeholders and after approval of the Delhi Urban Arts Commission ('DUAC'). Despite a detailed representation made by the Petitioners to it on 17.7.2006, the NDMC implemented a traffic circulation plan with effect from 25.7.2006 without any such consultation with the petitioners and other stakeholders or the approval of the DUAC. It was in these circumstances that the petitioners filed W.P. (C) No. 1180-83 of 2006 in this Court.

3. The Petitioners in their writ petition alleged that their sales had dropped by 40% in view of the altered traffic circulation plan since the radial roads on which they were located were closed permanently from one end and therefore free movement of traffic on those roads was not

possible. The Petitioners also relied upon the provisions of Section 202, 203 and 207 of the New Delhi Municipal Council Act, 1994 ('NDMC Act') to contend that the mandatory statutory procedural requirement of prior consultation as envisaged in those provisions was not complied with. Pursuant to orders passed by this Court on 25.7.2006 a meeting took place between the Petitioners and NDMC but nothing useful came out of it.

4. In a fairly detailed judgment dated 7.11.2006, this Court analysed the provisions of Section 202, 203 and 207 of the NDMC Act and concluded, inter alia that in the event NDMC caused closure of a part and whole of a public street prior sanction of the Council had to be obtained. This Court further held that the NDMC was also under an obligation to issue public notice of the proposal, and grant hearing to the persons likely to be affected, so that their objections and suggestions are duly considered. The Court drew a distinction between the prohibition of the use of a street as a transit and the closure of a street, either on a partial or permanent basis. This Court held: Broadly stated the legislative intention in the enactment of such provisions is to enable effective policies regulating public streets and their implementation. In metropolises like Delhi with their endemic traffic problems, municipal authorities have to necessarily conceive and formulate multipronged solutions to ease congestion on the roads. Section 203 and 207 are meant to effectuate that purpose. Parliament of course also visualised situations where interests, both residential and commercial could be affected with exercise of the such power to close public street, or prohibit use of parts of such streets. Therefore, procedural safeguards such as previous sanctions by the Council and reasonable opportunity of hearing, and consideration of the objections and suggestions by individuals were mandated. The necessity of evolving such procedural safeguards is not open to debate; the question is whether those provisions have been breached, as the petitioner complains.

5. The Court noted in its judgment in para 20 that it was informed by the NDMC that its proposed traffic circulation plan was a draft plan and therefore an experimental one. The Court also noted in para 21 the stand of the NDMC that if the traffic plan is finalised, in its present and modified version (as is to scheduled to be the case in the next couple of months) the procedural requirements of Section 203(2) and 207 would be complied with.

6. Since the stand of the NDMC was that the proposed plan was a draft plan that had not yet been finalised this Court concluded that the petition was premature. This Court observed as under: If at the end of trial or temporary periods therefore, the NDMC forms the opinion that part of a public street or an entire public street should be closed to traffic or restrictions contemplated under Section 207 have to be put in place, the procedural requirements would have to be fulfilled at that stage.

7. This Court felt that it was not equipped to examine the merits of the draft plan. Moreover, since the measure was a temporary one, the draft plan could not viewed as being unreasonable. Finally in para 28 of its judgment the Court issued the following directions: 28. In view of the above conclusions, I find no merit in the contentions raised. Yet in view of the statement made on behalf of the NDMC, a direction is issued to the respondent to finalise the traffic circulation plan by taking into consideration all material facts including the experience gathered since 25.07.2006 and to follow the procedure, prescribed by Section 203(2) and 207, if any public street or part of it is proposed to be closed permanently, as expeditiously as possible and within three months from today.

8. The present petition was filed after attempts made by the Petitioners to have the directions complied with by the NDMC failed. Mr.Peeyoosh Kalra, learned counsel for the

Petitioners submits that in more than one way, the judgment dated 27.11.2006 of this Court has been violated and that too deliberately and wilfully by the NDMC. Although the NDMC had been directed to take a final decision within three months from 27.11.2006 after following Sections 203 and 207, the final decision of the NDMC was stated to have been taken only on 28.6.2007 after the present contempt petition was filed. The statutory procedures were also not followed and therefore a clear case of contempt was made out. He placed reliance on the judgment of the Honble Supreme Court in All Bengal Excise Licensees Association v. Raghabendra Singh 2007 (4) SCALE 155.

9. Appearing for the NDMC, Mr. V.P. Singh learned Senior counsel submitted that no case for contempt was made out. He sought to rely on the judgment of this Court in International Metro Civil Contractors v. R.K.Verma (2005) 125 DLT 191. He submitted that the NDMC was of the view that the traffic circulation plan that had been made effective in April 2006 was found to be an effective one which needed to be continued. Further the NDMC was of the view that since there was no permanent closure of any road there was no need to comply with Section 203 (2) of the NDMC Act. He referred to the averment in the reply affidavit filed by the NDMC in these proceedings to the following effect: On 31.05.2007 the Council during its meeting discussed the Agenda and noted that it is a case of prohibition/regulation to entry/ exit from/ to outer circle to Radial road No.3 (Panchkuian radial), Radial Road No.5 (Minto Radial), radial road No. 7 (Barakhamba radial) covered by Section 207 (2) of NDMC Act, 1994. The Council has noticed that it is not the closure of road and not covered by Section 203 (2) of the Act. He reiterated that since this was only a regulation of the traffic which did not result in permanent closure it was sufficient that the procedure under Section 207 was followed by the NDMC, which in fact it did. A copy of a notice inserted by the NDMC in the newspapers informing the public of the finalised traffic regulation plan has been enclosed to the reply affidavit.

10. As regards the approval of the DUAC, the stand taken by the NDMC in its reply affidavit reads as under: That Delhi Urban Art Commission has now given its approval of traffic plan under overall Redevelopment Scheme of Connaught Place which is different from the one in the existence. This plan approved by DUAC has got three loop systems. The entry to inner circle is from radial road No.1 (Janpath), radial road No.3(Panchkuian Road), radial road No.6 (Narula's). The exit is from radial road No.2 (B.K.S. Marg), radial road No.4 (State Entry) and radial road No.7 (Barakhamba). The Minto Road Radial is proposed to be closed for parking. Besides there is entry to Parking through radial road No.1 A. DUAC has asked NDMC to prepare other components of Redevelopment Plan based on this traffic circulation plan. This may take considerable period of time as Redevelopment Plan for entire Connaught Place has to be prepared and approved by DUAC before the work can start on the ground.

11. In light of the above averments and submissions this Court is required to first examine if there has been a disobedience by the NDMC of the directions issued by this Court in its judgment dated 7.11.2006 and thereafter whether such disobedience is wilful warranting directions in the contempt jurisdiction. The question that arises is whether the traffic circulation plan in question results in partial or total closure of any road and consequently if the procedure envisaged under Section 203 (2) of the NDMC is required to be followed. If there is no such permanent closure as contended by the NDMC then the provisions of Section 207 of the NDMC would be attracted. It is not the petitioners case that the latter procedure has not been followed. Their case is entirely based on Section 203. The relevant provisions read as under: 203. Functions of Chairperson in respect of public streets. (1) The Chairperson shall, from time to time, cause all public streets vested in the Council to be levelled, metalled or paved, channelled, altered or repaired, and may widen, extend or otherwise improve any such street or cause the soil

thereof to be raised, lowered or altered or may place and keep in repair fences and posts for the safety of foot passengers: Provided that no widening, extension or other improvement of a public street, the aggregate cost of which will exceed one lakh rupees, shall be undertaken by the Chairperson except with the previous sanction of the Council. 2) With the previous sanction of the Council, the Chairperson may permanently close the whole or any part of a public street: Provided that before according such sanction the Council shall by notice, published in the manner specified by bye-laws give reasonable opportunity to the residents likely to be affected by such closure to make suggestions or objections with respect to such closure and shall consider all such suggestions or objections which may be made within one month from the date of publication of the said notice. 204. Disposal of land forming site of public streets permanently closed. Whenever any public street or a part thereof is permanently closed under sub- section (2) of section 203 the site of such street or of the portion thereof may be disposed of as land vesting in the Council. 207. Power to prohibit or regulate use of public streets for certain kind of traffic. (1) The Chairperson may-- (a) prohibit or regulate vehicular traffic in any public street or any portion thereof so as to prevent danger, obstruction or inconvenience to the public or to ensure decongestion or smooth flow or quietness in any locality; (b) prohibit or regulate in respect of all public streets, or any particular public street, the transit of any vehicle of such form, construction weight or size or laden with such heavy or unwieldy objects as may be likely to cause injury to the road-ways or any construction thereon, except under such conditions as to time, mode of traction or locomotion, use of appliances for the protection of roadways, number of lights and assistants and other general precautions and upon the payment of such charges as may be specified by the Chairperson generally or specially in each case; and (c) prohibit or regulate access to premises from any particular public street carrying high speed vehicular traffic: Provided that the Chairperson shall not take action without sanction of the Council in cases under clauses (a) and (c). (2) Notices of such prohibition as are imposed under sub-section (1) shall be posted in conspicuous places at or near both ends of public streets or portions thereof to which they relate, unless such prohibition applies generally to all public streets.

12. The words in sub-section (2) of Section 203 to the effect that the NDMC could permanently close the whole or any part of a public street indicate that closure could be temporary or permanent and further that such closure could be of the whole or part of any street. Thus even a part of the street could be permanently closed and if that happens the procedure outlined in the proviso would be attracted. Mr.Singh repeatedly stresses that as long as there is movement of some traffic on the road, even if it ends in a cul de sac, it cannot be said that there is a permanent closure. This submission proceeds on the basis that closure means complete closure of the entire road. It does not account for the legislative intent in using the express words closure of the whole or part of any public street. A further indication is available in Section 204 which accounts for another consequence whenever any public street or a part thereof is permanently closed under sub-section (2) of Section 203 Therefore the argument of the NDMC that there must be a permanent closure of the whole of the street for the proviso to Section 203 (2) of the NDMC Act to be attracted is without merit. As already explained by this Court in the judgment dated 7.11.2006, the very purpose of the procedure under Section 203 is to give the affected parties an opportunity of being heard before a revised plan for regulation of the traffic on roads which results in permanent closure of a whole or part of the road can be finalised by the NDMC.

13. A copy of the traffic circulation plan in question has been placed on record. It shows that at least three radial roads have been permanently blocked at one end thus prohibiting entry into those roads from the outer circle of Connaught Place. The photographs annexed to the present contempt petition confirm this position. The traffic can move in only from one direction on these

roads. The roads at the closed end finish in a cul de sac. The photographs further show that at the closed end the land on which street was located has been converted into a parking lot which further indicates that it was indeed a closure on a permanent basis of that part of the three radial roads connecting the outer circle to the inner circle of Connaught Place. The power to use that land for a parking lot is traceable to Section 204 of the NDMC Act. Thus viewed from any angle, the inescapable conclusion is that there is a permanent closure of a part of at least three roads as a result of the traffic circulation plan in question. Therefore this was a case where the NDMC ought to have, in terms of the order dated 7.11.2006 passed by this Court, complied with the procedure under Section 203 (2) of the NDMC Act before finalizing the traffic circulation plan.

14. Admittedly, at no stage after the order dated 7.11.2006 of this Court, were the Petitioners consulted or the procedure under the proviso to Section 203 complied with before the traffic circulation plan was finalised by the NDMC. In the circumstances it is held that there has been non-compliance by the NDMC with the binding directions contained in the judgment dated 7.11.2006. Further there can be no doubt at all that the order has not been complied with within the time stipulated.

15. Mr. V.P.Singh then submitted that since there is no deliberate and wilful disobedience of the Order passed by a learned Single Judge of this Court, no case for contempt is made out. He further submitted that if the Petitioners have a grievance about the revised traffic circulation plan, they should file a separate writ petition.

16. While the Court may agree with the first part of this submission it is not able to accept the second part. As long as the mandamus issued by this Court as contained in its judgment dated 7.11.2006 has not been complied with in letter and spirit by the NDMC it would be unfair to relegate the Petitioners to another writ petition seeking the same relief. As regards the point concerning wilful disobedience, although the decision of this Court in International Metro Civil Contractors does not help the petitioner as the facts there were quite different, at the same time it cannot be said that the Respondents have wilfully disobeyed the orders of this Court. It is quite possible that they were exploring the possibilities of filing an appeal or even if they did not, they were perhaps not clear whether Section 203 applied at all or not. Accordingly it is held that although it is a case of disobedience of the Orders of this Court, it cannot be said to be willful and deliberate disobedience warranting action for contempt.

17. This Court considers it to be in the interests of justice to direct that the Petitioners should be given a full fledged hearing by the NDMC on their representation dated 17.7.2006 and any other data, including an alternative traffic management plan, as the Petitioners may want to place before the NDMC. This should be done within four weeks from today and in any event not later than 12th October, 2007. The NDMC's decision on the Petitioners' representation after hearing the Petitioners should be given in writing within a further period of two weeks thereafter and in any event not later than 29th October, 2007 and be communicated to the Petitioners within a week thereof. Till such time the decision on the petitioners representation is not taken as directed, the traffic circulation plan in question would be treated as having not been finalised. If the Petitioners are aggrieved by the decision on their representation, they can proceed thereafter in accordance with the law.

18. With the above directions, the contempt petition and the pending applications are disposed of with no order as to costs.

19. A copy of this judgment be delivered by the Registry to the Chairperson, NDMC within five days for compliance.

Sd./-
S.MURALIDHAR, J

September 14, 2007